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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

[Appropriation for AID Operating Expenses Account]

FILE: B-197881

DATE: April 8, 1980

ACC 00097

MATTER OF: Appropriation for Agency for International Development under fiscal year 1980 continuing resolution

DIGEST: Under fiscal year 1980 continuing resolution, current rate for operations of Operating Expenses account of Agency for International Development is \$254 million, amount appropriated for account for fiscal year 1979. Amount of money administratively transferred out of account during fiscal year 1979 under authority contained in substantive legislation should not be deducted in calculating current rate.

ACC 00596

The Assistant Director, Accounting Operations, Bureau of Government Financial Operations, Department of the Treasury, has requested our decision on the amount of money appropriated for the Operating Expenses account of the Agency for International Development (AID) by the Joint Resolution making continuing appropriations for the fiscal year 1980, and for other purposes, Pub. L. No. 96-123, 93 Stat. 923. The continuing resolution by its terms appropriates sufficient funds to continue activities under this account at a rate for operations not exceeding the lower of the current rate or the rate provided by the Foreign Assistance and Related Programs Appropriations Act, 1980 (H.R. 4473) as it passed the House of Representatives. Specifically, the Assistant Director asks whether, in calculating the current rate for this account under the resolution, to deduct from the amount appropriated for fiscal year 1979 the \$1.5 million which was transferred from the Operating Expenses account to the International Disaster Assistance account in September 1979.

The General Counsel of AID has written to us expressing the agency's view that the current rate is the full \$254 million appropriated for the Operating Expenses account for fiscal year 1979, without any deduction for funds administratively transferred during the fiscal year.

For the reasons indicated below, we agree with AID that the current rate for the Operating Expenses account, under the 1980 continuing resolution, is the total amount of funds appropriated for the account for fiscal year 1979, or \$254 million. Funds administratively transferred from the account during the fiscal year, under authority contained in substantive legislation, should not be deducted in determining the current rate.

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The Foreign Assistance and Related Programs Appropriations Act, 1979, Pub. L. No. 95-481, 92 Stat. 1591, appropriated \$254 million for operating expenses of AID. In September 1979, \$1.5 million was transferred from AID's Operating Expenses account to the International Disaster Assistance account to permit the United States to respond to the effects of Hurricane David which had recently devastated the nations of the Caribbean. This transfer was made under the authority contained in section 610 of the Foreign Assistance Act of 1961, 22 U.S.C. § 2360 (1976), which provides in subsection (a):

"Whenever the President determines it to be necessary for the purposes of this Act, not to exceed 10 per centum of the funds made available for any provision of this Act * * * may be transferred to, and consolidated with, the funds made available for any other provision of this Act * * *, and may be used for any of the purposes for which such funds may be used, except that the total in the provision for the benefit of which the transfer is made shall not be increased by more than 20 per centum of the amount of funds made available for such provision.

It is this \$1.5 million transfer which gives rise to the Assistant Director's inquiry.

The fiscal year 1980 continuing resolution appropriates in subsection 101(a):

"Such amounts as may be necessary for continuing projects or activities (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal year 1979 and for which appropriations, funds or other authority would be available in the following appropriation Acts:

"Foreign Assistance and Related Programs Appropriations Act, 1980, notwithstanding section 10 of Public Law 91-672, and section 15(a) of the Act entitled, 'An Act to provide certain basic authority for the Department of State' approved August 1, 1956, as amended * * *."

Paragraph (4) of subsection 101(a) provides:

"Whenever an Act listed in this subsection has been passed by only one House as of October 1, 1979, or where an item is included in only one version of an Act as passed by both Houses as of October 1, 1979, the pertinent project or activity shall be continued under the appropriation,

fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1979 * * *."

The Foreign Assistance and Related Programs Appropriations Act, 1980 (H.R. 4473), was passed by the House of Representatives on September 6, 1979. The Act was not passed by the Senate prior to October 1, 1979. Therefore under paragraph (4), quoted above, activities under this Act are to continue at a rate not exceeding the current rate or the rate provided in the House-passed version of H.R. 4473, whichever is lower.

The Treasury and AID letters indicate, and we agree, that regardless of whether we deduct the funds administratively transferred from the operating expenses account, the current rate is less than the rate under H.R. 4473.

This Office has repeatedly interpreted the term "current rate," as used in continuing resolutions, as being equivalent to the total appropriation or the total funds which were available for obligation for a particular activity during the previous fiscal year. See CETA Appropriations under 1979 Continuing Resolution, 58 Comp. Gen. 530, 533 (1979), and decisions cited therein. We have further concluded that in those instances in which the activity in question has been funded by one-year appropriations in prior years the current rate is equal to the total funds appropriated for the program for the previous fiscal year. Id.

Based on these previous rulings we would conclude that the amount of the appropriation, without any deduction for funds transferred during the fiscal year, is the measure of current rate in this case. Moreover, we have previously reached the same result in a similar situation.

In Rate for operations for military assistance, B-152554, November 4, 1974, we were faced with the question of whether \$5 million transferred out of the military assistance appropriation, under presidential authority similar to that in this case, should be deducted from the previous year's appropriation in calculating current rate. In reaching our decision we quoted extensively from the letter from the Acting Assistant Secretary of the Department of Defense. The letter reviewed the legislative history of the continuing resolution which did not reveal any intent by the Congress to deduct the money transferred out. We then noted:

"The Acting Assistant Secretary also observes that the approach of treating the current rate as the amount appropriated has been followed in the past in an 'analogous reverse case' by exclusion of transfer-in which

had the effect of increasing amounts appropriated. See our letter to Senator Proxmire dated February 17, 1972, B-152554 * * *."

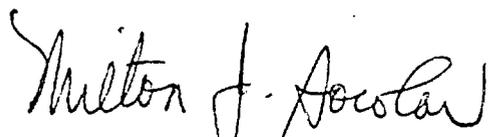
Our conclusion was as follows:

"We agree, for the reasons stated by the Acting Assistant Secretary, that the \$5,000,000 transfer-out * * * need not be deducted from the stated amount of the 1974 appropriation for purposes of calculating the current rate for MAP."

In the present case, we likewise conclude that in determining the current rate the \$1.5 million dollars transferred out of AID's Operating Expenses account should not be deducted from the amount of the fiscal year 1979 appropriation. It is clear that in considering the fiscal year 1980 appropriation for AID operating expenses the Committees on Appropriation in both the House and the Senate considered the full \$254 million as the previous year's level of operations. See H.R. Rept. No. 96-273, 96th Cong., 1st Sess. 48, 97 (1979); S. Rept. No. 96-358, 96th Cong., 1st Sess. 101, 158-59 (1979). Certainly when these same committees considered the continuing resolution for fiscal year 1980 they would have assumed that the previous year's level was the same \$254 million.

Moreover, to deduct the \$1.5 million transferred out would distort the intent of the Congress. This money was appropriated by the Congress for AID's fiscal year 1979 operating expenses. It was transferred and obligated in the International Disaster Assistance account only because a natural disaster, that could not have been anticipated, required more funds than were actually appropriated by the Congress for that account in fiscal year 1979. To require that this transfer be carried over into fiscal year 1980, in which there may be no similar need for disaster funds, would be contrary to the intent of the Congress. Further, the transfer of funds took place in fiscal year 1979 only when the President made the required determination under section 610 of the Foreign Assistance Act. To allow such transfer to occur in fiscal year 1980 under the continuing resolution without a similar presidential determination would defeat the purpose of the transfer provision.

We therefore conclude that the current rate for AID operating expenses under the fiscal year 1980 continuing resolution is the full \$254 million appropriated for the account for fiscal year 1979, without deducting the \$1.5 million that was administratively transferred in 1979.



For the Comptroller General
of the United States